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BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

KEN HUGHES,

Appellant,

v.

PUGET SOUND AIR POLLUTION
AGENCY,

Respondent.

PCHB No. 90-206

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a Notice and Order of Civil Penalty (No. 7232) for allegedly causing or allowing an outdoor fire containing prohibited materials, came on for formal hearing before the Pollution Control Hearings Board, Harold S. Zimmerman, presiding and Member Annette S. McGee, on January 10, 1991, at Lacey, Washington.

Appellant Ken Hughes appeared pro se. Respondent Puget Sound Air Pollution Control Agency (PSAPCA) was represented by its attorney Kevin McGoffin. The proceedings were recorded by Marilyn A. Johnson, reporter for Gene Barker and Associates.

Witnesses were sworn and testified. Exhibits were admitted and examined. From the testimony heard and exhibits examined, the Board makes these:

FINDINGS OF FACT

I

At 8:37 a.m. on July 2, 1990, the Auburn Fire Department was

FINAL FINDINGS OF FACT,
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(1)

1 called about what was thought to be a house fire at 1805 S. Second
2 Street. When the fire department personnel arrived on the scene, they
3 did not find a house fire, but observed an outdoor fire next door that
4 was pouring up dense, black smoke, and which included wooden pallets.

5 II

6 Lt. Bill Petersen, the officer in charge, contacted Kenneth
7 Hughes of 9 H Street SE, who was tending the fire, and asked if he had
8 a burning permit. Hughes had a permit for burning natural vegetation
9 only.

10 III

11 Lt. Peterson reported there were 6 or 7 pallets, the smoke was of
12 unusual color, as if some petroleum products could have been in it and
13 that the smoke rose 20 to 30 feet. The day was rainy, overcast and
14 about 50 degrees fahrenheit. After firefighters extinguished the
15 fire, Petersen notified Hughes that the permit for residential burning
16 allowed a fire to be four feet by three feet in size, and nothing
17 other than natural vegetation is to be burned.

18 IV

19 Later Fire Inspector David Smith took pictures of the scene, the
20 bushes, the tall grass, some logs, pallets, sawn and charred lumber,
21 near a wire fence.

22 V

23 The reports of Petersen on the incident were sent by the King
24 County Fire Protection District No. 31 to the Puget Sound Air
25

1 Pollution Control Agency. On July 10, 1990, Mario A. Miller, air
2 pollution inspector and team leader sent to Mr. Hughes a Notice of
3 Violation No. 20279 for an unlawful outdoor fire, citing PSAPCA's
4 Regulation I, Section 8.02(a)(2), and 8.02(a)(4).

5 VI

6 Mr. Hughes responded to PSAPCA July 16, 1990, that he is now
7 aware pallets are not considered organic material, and there would be
8 no re-occurrence of the unlawful burning.

9 VII

10 On August 13, 1990, PSAPCA sent a Notice of Civil Penalty by
11 certified mail to Mr. Hughes, which three times was returned to PSAPCA
12 as "unclaimed." No telephone calls were made to Mr. Hughes regarding
13 the case. There is no assertion by the appellant that he was not
14 notified of the penalty.

15 VIII

16 A motion by PSAPCA for dismissal of the case was received by
17 Mr. Hughes on October 27, 1990, and was denied by the Pollution
18 Control Hearings Board on November 27, 1990.

19 IX

20 Any Conclusion of Law deemed to be a Finding of Fact is hereby
21 adopted as such. From these Findings of Fact, the Board makes these

22 CONCLUSIONS OF LAW

23 I

24 The Board has jurisdiction over these persons and these matters.

1 Chapters 43.21B and 70.94 RCW.

2 II

3 RCW 70.94.70 states in pertinent part:

4 It is the policy of the state to achieve and maintain
5 high levels of air quality and to this end to minimize to
6 the greatest extent reasonably possible the burning of
7 outdoor fires. Consistent with this policy, the
8 legislature declares that such fires should be allowed
9 only on a limited basis under strict regulation and close
10 control.

11 RCW 70.94.775 states in pertinent part:

12 No person shall cause or allow any outdoor fire:

13 (1) containing garbage, dead animals, asphalt,
14 petroleum products, paints, rubber products,
15 plastics, or any substance other than natural
16 vegetation which emits dense smoke or obnoxious
17 odors. . . .

18 III

19 At the time of the event in question, Section 8.02(a)(2) of
20 PSAPCA Regulation I, stated in pertinent part:

21 It shall be unlawful for any person to cause or allow
22 any outdoor fire: . . .

23 (3) containing garbage, dead animals, asphalt,
24 petroleum products, paints, rubber products,
25 plastics, or any substance other than natural
26 vegetation which emits dense smoke or obnoxious
27 odors. . . .

IV

28 We conclude that the fire burned on July 2, 1990, violated
29 Regulation I, Section 8.02(a)(2) and RCW 70.94.775 because it
30 contained prohibited materials, the wooden pallets.

1 Section 8.02(a)(4) prohibits an outdoor fire other than land
2 clearing or residential burning. This fire was neither, and therefore
3 Ken Hughes violated this Section.

4 V

5 The amount of the fine depends upon several factors, including
6 the severity of the offense, whether there have been past violations,
7 and so forth. Mr. Hughes has no previous violations. On the other
8 hand, he failed to respond to three certified notices. The agency
9 likewise could have made a phone call to ascertain a response.

10 We conclude that a fine of \$1,000 should be reduced to \$500, with
11 \$250 due and \$250 suspended for a period of two years provided there
12 are no unexcused air pollution violations.

13 VI

14 Any Finding of Fact deemed to be a Conclusion of Law is hereby
15 adopted as such. From these Conclusions of Law, the Board enters this:
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ORDER

The violation of Section 8.02(a)(2) and Section 8.02(a)(4) is AFFIRMED as to liability. The \$1,000 penalty is REDUCED to \$500, with \$250 due and \$250 SUSPENDED provided that Ken Hughes has no violations of air pollution laws for two years.

DONE this 22nd day of January, 1991.

POLLUTION CONTROL HEARINGS BOARD

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Presiding

Annette S. McGee
ANNETTE S. MCGEE, Member